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Amendment

REMARKS

This Amendment After Final is in response to the Final Office Action mailed April 23, 2003, wherein claims 1-3, 16-19 and 22-24 were rejected. The specific rejections to the claims are addressed in the following paragraphs, which are provided with paragraph numbers and headings corresponding to the rejections as they were presented in the Final Office Action.

Claim Rejections – 35 USC §102

2. In the Final Office Action claims 1, 2, 16-18, 23 and 24 were rejected under 35 U.S.C. § 102(b) as being anticipated by WO 95/31945 to Burmeister et al (Burmeister). In response, claim 1 has been amended to describe the endoluminal device comprising a framework of two sections, wherein the framework comprises a first section which *consists* of a superelastic material, and a second section which comprises a first layer of superelastic material and a second layer of plastically deformable material. In the first section, the superelastic material extends in a plurality of longitudinal stripes. The second section comprises a combination of a first layer of superelastic material and a second layer of plastically deformable material extending in a second plurality of longitudinal stripes.

As indicated in the official action, Burmeister describes multiple stent configurations. However, Burmeister, or the individual embodiments shown in FIGs 1, 5, 6, 8-11 and 14-16 of Burmeister, does not describe an endoluminal device having all of the elements recited in the instant claims.

In FIGs. 1, 5, 6, and 8-11, Burmeister describes a stent having a layered construction. Though the layers of the stent of Burmeister may be embodied in the form of wires such as in the braided stent shown in FIGs. 14-16, *each* of the wires of the braid consist of two different alloys (page 13, lines 3-13). It is thus clear that contrary to the assertion of the official action none, of the embodiments shown and described in FIGs. 1, 5, 6, 8-11 and 14-16 of Burmeister teach that the stent includes a framework comprising a first section and a second section, wherein the first section consists of a superelastic material and the second section comprises a first layer of super elastic material and a second layer of plastically deformable material as the instant claims recite.

In light of the above, the rejection is overcome.

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3. In the Office Action claims 1-3, 16-19 and 22-24 were rejected under § 102(t) as being anticipated by US Patent No. 5,725,570 to Heath. More specifically, the Office Action directs the Applicant to FIGs. 2-3 and line 31 of column 4 through line 9 of column 5, and lines 31-49 of column 7 of the Heath reference.

The wire-form member of Heath is constructed with an outer member concentrically disposed about a central core which extends along an axis. The core is bonded to and substantially enclosed by the outer member such that the core does not contact body tissue when positioned within the body during use (column 4 lines 55-59).

The Heath reference does not teach the limitations as set forth in the instant claims. Whereas Heath describes a stent constructed from a multicomponent filament, the instant claims recite a framework comprising not only the two layer construction of the second section, but also a first section consisting of a superelastic material. Nowhere does Heath indicate, providing, in addition to the multicomponent filament, a filament that consists of a superelastic material.

Because Heath fails to teach all of the elements of the instant claims, the rejection is overcome.

Claim Rejections – 35 USC §103

5. In the Final Office Action claim 19 was rejected under 35 U.S.C. § 103(a) as being obvious over Burmeister in view of U.S. Patent No. 6,217,607 to Alt. As has been previously pointed out in prior communications, Applicant respectfully asserts that, because claim 19 depends from amended claim 1, which is believed to be allowable for the reasons above, claim 19 is also believed to be allowable.

Moreover, Alt has been cited in the Final Office Action for teaching the use of gold for a coating on a nitinol stent. However, the addition of Alt to Burmeister does nothing to address the failure of Burmeister alone to teach or suggest the presence of section of a framework consisting of a superelastic material, as recited in claim 1 from which the instant claim depends.

As a result the rejection is respectfully overcome.

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FORMALITIES

If an extension of time is required to make this response timely and no separate petition is enclosed, Applicant hereby petitions for an extension of time sufficient to make the response timely. In the event that this response requires the payment of government fees and payment is not enclosed, please charge Deposit Account No. 22-0350.

CONCLUSION

In view of the foregoing it is believed that the present application, with claim : 1-2, 16-19 and 22-24 is in condition for allowance. Applicant respectfully requests that the Amendment be considered and the rejections withdrawn. Early action to that effect is earnestly solicited.

Respectfully submitted,

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Marked-Up Text

Marked Copy of the Amended Claims

Please replace claims 1 and 23 with the following amended claims:

1. (Twice Amended) An endoluminal device comprising:
a framework, the framework comprising a first section and a second [at least one superelastic section] section [comprising] , the first section consisting of a superelastic material extending in a first plurality of longitudinal stripes, [and] the second [at least one plastically deformable] section comprising a combination of a first layer of superelastic material and a second layer of plastically deformable material extending in a second plurality of longitudinal stripes.

23. (Amended) The device of claim 1, wherein [each of] said superelastic [sections] material comprises nitinol and [each of] said [physically deformable sections comprises a] plastically deformable material is selected from the group consisting of: gold, platinum, tantalum, titanium, stainless steel, tungsten, palladium, a nickel alloy, a titanium alloy, a cobalt alloy, and a combination thereof.